IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6907 OF 2002

Shri Balbhim Co-op. Bank Ltd. Petitioner

versus

Pahilraj Gurumukhdas Ahuja
and another Respondents

H.S.Venegavkar, adv. for petitioner.
Dr.V.K.Choudhari with Anurag Jain, adv. for respondent no.1.
A.H.Pakekar, AGP for respondent no.2.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 17th December 2004
PC :

1. The petitioner is a co-operative bank. It is aggrieved by an order of the Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Miscellaneous Application No.K-46/02 preferred by respondent no.1.

2. The Divisional Joint Registrar was seized of a complaint made by respondent no.1 against petitioner bank that it is not extending the benefit of one time settlement scheme in it's favour by scaling down the rate of interest as per the Circulars issued by Reserve Bank of India from time to time. It is not disputed that the petitioner bank had preferred a dispute

application being CCS No.101 of 1995 in the Co-operative Court No.1, Kolhapur for recovery of a sum of Rs.7,19,288/- against respondent no.1 and his surety. An award was made in favour of petitioner bank by the Co-operative Court on 29th October 2001 directing respondent no.1 as well as surety to pay a sum of Rs.6,61,736/- with future interest @ 15% p.a..

3. The grievance of the borrower before the Joint Registrar was that the bank has turned down the offer made by him and is refusing to extend the benefit of scheme on the ground that the matter is subjudice.

4. The Joint Registrar has considered the objections of petitioner his jurisdiction and by order under challenge has directed that the petitioner bank should settle the loan account of the applicant (respondent no.1) as per his proposal dated 28th February 2002. Admittedly, this order of the Divisional Joint Registrar is after the award of Co-operative Court.

5. After hearing Mr.Venegavkar for petitioner and Mr.Thorat with Dr.Chaudhari for respondent no.1, in my view, the larger issue as to whether

the Divisional Joint Registrar has jurisdiction to interfere in this case when the dispute was adjudicated by a competent Co-operative Court, need not be decided. The claim of the bank is not seriously disputed. It appears from the record that no appeal is preferred challenging award of the Co-operative Court. The Divisional Joint Registrar has taken a view that the proposal submitted by respondent no.1 should have been considered and has also taken a view that the objections of the bank were untenable. Even this aspect touching the merits of the claim need not detain me as admittedly award was in force on the date of order of the Divisional Joint Registrar. Ultimately, the matter was between the bank and the borrower and the terms of settlement could not be arrived at. All that is being agitated is scaling down of the rate of future interest.

6. Considering the facts and circumstances in their totality and without in any manner creating a precedent, in my view, the award of the Co-operative Court can be substituted with a direction as regard payment of future interest. Accordingly, respondent no.1 and the surety Bapuso Sahadeo Kamble are directed to pay a sum

of Rs.6,61,736/- to the petitioner bank along with simple future interest @ 12% p.a. on Rs.4.00 lakh from 1st March 1995 till realisation. Save and except this modification the award of the Co-operative Court no.1, at Kolhapur is confirmed. In the light of this order of the Divisional Joint Registrar, does not survive. Petition is disposed of.

7. Needless to observe that if respondent no.1 as well as surety do not clear the dues of the bank, it will be open for the petitioner to initiate such steps as are permissible in law for enforcement and execution of the award.

8. At this stage Mr.Chaudhari, adv. for respondent no.1 prays for three months time to make payment as per the award with the substitution as above. Time granted. The first respondent as well as surety are directed to pay the aforesaid amount within three months from today failing which the petitioner would be at liberty to enforce and execute the award. The petitioner bank to furnish to respondent no.1 as well as surety the revised calculations within a period of two weeks from today. Petition is disposed of.

(S.C.DHARMADHIKARI, J.)